STATE OF MICHIGAN
IN THE COURT OF APPEALS

HON. KWAME M. KILPATRICK,

Plaintiff-Appellant,

v. Court of Appeals No.

HON. JENNIFER M. GRANHOLM,
in her official capacity as Governor of the State of Michigan,
and DETROIT CITY COUNCIL,

Defendant-Appellees.

Circuit Court Number: 08-122051 CZ

James Thomas (P23801)
Of Counsel, Plunkett & Cooney
Attorney for Hon. Kwame Kilpatrick

JOSEPH A. NISKAR (P55538)
MICHAEL C. NAUGHTON (P70856)
535 Griswold Street, Suite 2632
Detroit, MI 48226
(313) 963-2420
535 Griswold St., Suite 2632
Detroit, MI 48226
(313) 963-2420

Dan K. Webb
Winston & Strawn
Attorney for Hon. Kwame Kilpatrick
35 W. Wacker Dr. #4200
Chicago, IL 60601
(312) 558-5600

Kelly G. Keenan (P36129)
John C. Wernet (P31037)
Office of the Governor
Attorneys for Hon. Jennifer Granholm
111 S. Capitol Ave.
P.O. Box 30013
Lansing, MI 48909

William H. Goodman (P14173)
Special Counsel to Detroit City Council
Goodman & Hurwitz P.C.
1394 E. Jefferson Ave.
Detroit, Michigan 48207
(313) 567-6170

David D. Whitaker (P40299)
Director of Research & Analysis
Special Counsel to Detroit City Council
2 Woodward Ave., Room 216
Coleman A. Young Municipal Center
Detroit, MI 48226
(313) 224-4946

PLAINTIFF-APPELLANT'S BRIEF ON APPEAL

****ORAL ARGUMENT REQUESTED****

TABLE OF CONTENTS

INDEX OF AUTHORITIES

MICHIGAN CONSTITUTION

STATUTES

MICHIGAN CASES

FEDERAL CASES

CASES FROM OTHER JURISDICTIONS

RULES

MISCELLANEOUS

INDEX OF EXHIBITS

STATEMENT OF BASIS OF JURISDICTION

As a general rule, an appeal as of right is available pursuant to MCR 7.203(a). Judge Ziolkowki's dismissal of the complaint and denial of the Plaintiff-Appellant's Motion for a Temporary Restraining Order is a final judgment and final order as defined by MCR 7.202(6). However, in this matter, jurisdiction is a hotly contested issue. Contrary to the Governor's and City Council's assertions, this Honorable Court does indeed have jurisdiction to hear this case.

Simply because a governor is vested with the power to remove an elected official, he or she is not empowered to do so at the expense of the official's constitutional rights.[1] In Bubak, the Governor had delegated his fact finding role in removal proceedings to probate judges. A suit was brought prior to the removal hearing and the Michigan Supreme Court held that such a delegation of duties was not in conformity with the Michigan Constitution. The Court recognized that although its intervention into the executive function should be "exceedingly limited," the Court also understood that the question of the constitutionality of the Governor's exercise of the removal power must be addressed by the courts.[2]

Therefore, jurisdiction to decide this issue was appropriate before Judge Robert L. Ziolkowski under MCL § 600.601, MCL § 600.605, and MCR 2.605, and venue in Wayne County was proper under MCL § 600.1621(b) because Mr. Kilpatrick resides in the City of Detroit, Wayne County. Appellate review of his decision is properly before

1 Bubak v. Romney, 380 Mich. 209 , 156 N.W.2d 549 (1968).
2 Id.

this Honorable Court of Appeals.

STATEMENT OF QUESTIONS INVOLVED

1. **WHETHER OR NOT JUDGE ZIOLKOWSKI ERRED IN DENYING A TEMPORARY RESTRAINING ORDER BECAUSE THE REMOVAL PROCEEDINGS VIOLATE THE PLAINTIFF-APPELLANT'S CONSTITUTIONAL RIGHTS.**

   The Plaintiff-Appellant Says: YES

   The Defendant-Appellee Says: NO

STATEMENT OF FACTS

Kwame M. Kilpatrick is the twice-elected Mayor of the City of Detroit. In relation to his alleged conduct with respect to two civil lawsuits brought against the City of Detroit and Mr. Kilpatrick as the Mayor of the City of Detroit. Mr. Kilpatrick has been charged with eight felony counts in Wayne County Circuit Court on March 24, 2008, including perjury, misconduct in office and obstruction of justice. That matter is currently pending before Judge Margie Braxton. Mr. Kilpatrick has pled not guilty, asserts his constitutional right to be innocent until proven guilty and is awaiting trial on these charges on a date to be scheduled in the future. (Wayne County Circuit Court Case No.)

On May 20, 2008, pursuant to Art. 7, § 33 of the Michigan Constitution of 1963 and Section 327 of the Michigan Election Law, the Detroit City Council submitted a written petition to the Governor for the removal of Mr. Kilpatrick from the office of the Mayor of the City of Detroit. In response, the Governor, in an extraordinary action, scheduled a hearing in advance of Mr. Kilpatrick's trial in the criminal matter, to decide whether Mr. Kilpatrick should be removed from office for "official misconduct." A scheduling order was released by the Governor's office setting forth deadlines for motions, response briefs and a hearing date of September 3, 2008. A Motion to Dismiss or in the Alternative, Stay Proceedings was filed on August 6, 2008, making many arguments, including that the Mayor would be removed by operation of law if convicted

on any one of the charged felonies, including official misconduct.[3] City Council filed a response to this motion.

On August 25, 2008, Mr. Kilpatrick timely filed his reply brief in support of his motion to dismiss the removal petition pending before the Governor. By 9:00 a.m. August 26, 2008, without hearing argument, the Governor denied Kilpatrick's motion to dismiss the petition or stay the removal proceedings in an 18 page opinion and order.

The Governor has ordered that the removal hearing will be limited to the resolution of two questions:

1. Whether Mr. Kilpatrick, in his official capacity as Mayor of the City of Detroit, authorized settlements in the matters of Brown v. Detroit Mayor, Wayne Circuit Court (Docket No. 03-317557-NZ) and Harris v. Detroit Mayor, Wayne Circuit Court (Docket No. 03-337670-NZ) in furtherance of his personal and private interests; and
2. Whether Mr. Kilpatrick, in his official capacity as Mayor, concealed from or failed to disclose to the Detroit City Council information material to its review and approval of the settlements of those matters.

Under MCL § 168.327, the level of proof required in support of Mr. Kilpatrick's removal is that the Governor is "satisfied" that there is "sufficient evidence" of "official misconduct." This burden of proof is entirely vague and amorphous. In further support of that proposition, the Governor's aids indicated in a telephone conference on August 28, 2008, that she equates "sufficient evidence" with "satisfactory evidence," and that "satisfactory evidence" is evidence which she will determine to satisfy an unprejudiced

3 MCL § 201.3.

mind as to the truthfulness of the matter alleged.

The Governor has made statements in the press indicating her predisposition to the finding that Mr. Kilpatrick should be removed from office. Specifically, the Governor has repeatedly indicated that a quick resolution to Kilpatrick's situation is necessary for the good of the State of Michigan. At present, the only means to a quick resolution within the Governor's control is a rush to judgment for removal from office pursuant to MCL § 168.327. Moreover, in private discussions, the Governor has made statements that leave no question that she has prejudged this matter and is not interested in hearing any of Mr. Kilpatrick's defenses. The Governor is undoubtedly predisposed to remove Mr. Kilpatrick from office.

For the reasons stated below, Mr. Kilpatrick respectfully asks this Honorable Court to reverse Judge Ziolkowski's decision denying Plaintiff-Appellant's request for a temporary restraining order.

STANDARD OF REVIEW

Issues of constitutional law are reviewed de novo.[4] Review of a trial court's grant or denial of a temporary injunction for abuse of discretion.[5] There is an abuse of discretion when the trial court's decision falls outside the range of principled outcomes.[6] A question of statutory interpretation is a question of law that is reviewed de novo.[7]

4 People v. Harper, 479 Mich. 599, 610, 739 N.W.2d. 523 (2007); People v. Nutt, 469 Mich. 565, 573, 677 N.W.2d 1 (2004).

5 Detroit Fire Fighters Association of IAFF Local 344 v. City of Detroit, ___ Mich. ___, 753 N.W.2d 579, 584 (2008).

6 Maldonado v. Ford Motor Company, 476 Mich. 372, 388, 719 N.W.2d 809 (2006).

7 Costa v. Community Emergency Med. Services, 475 Mich. 403, 408, 716 N.W.2d 236 (2006).

ARGUMENT

I. WAYNE COUNTY CIRCUIT JUDGE ZIOLKOWSKI ERRED IN REFUSING TO GRANT A TEMPORARY RESTRAINING ORDER BECAUSE THE REMOVAL PROCEEDINGS VIOLATE THE PLAINTIFF-APPELLANT'S CONSTITUTIONAL RIGHTS

This is an unprecedented case. Plaintiff-Appellant ("Mr. Kilpatrick") has been chosen by the People of Detroit to serve as their Mayor on two occasions.

> People have a right to have officers whom they elect serve out the terms for which they were elected. It is contemplated by the constitution that such officers shall not be removed except for causes specified and that the cause or causes must exist. The Governor may not act at pleasure or caprice.[8]

In spite of this proposition, Governor Granholm seeks to conduct removal proceedings prior to the Defendant's adjudication of guilt on any underlying charges. Article 1, § 17 of the Michigan Constitution guarantees to all Michigan citizens:

> The right of all individuals, firms, corporations and voluntary associations to fair and just treatment in the course of legislative and executive investigations and hearings shall not be infringed.

There is sparse case law analyzing the meaning of the fair and just treatment clause or the relationship of the fair and just treatment clause to the due process protections. Despite this, the plain language of the clause makes clear that fair *and* just treatment is the constitutional minimum required in every legislative and executive investigation and hearing.[9] The clause provides a substantive right to the people to address governmental

8 People, ex rel. Johnson, v. Coffey, 237 Mich. App. 597-98 (1927), *citing* Metevier v. Therrien, 80 Mich. 187 (1890).

9 Jo-Dan, Ltd. v. Detroit Board of Education, No. 201406, 2000 Mich. App. LEXIS 1403, at *25 (2000).

abuses of authority. The removal hearing must, therefore, respect both the principles of fairness and justice in order to be constitutionally firm.[10]

The delegates at the constitutional convention of 1961 considered the relationship between due process and the fair and just treatment clause. One delegate explained the purpose of the fair and just treatment clause as follows:

> It may be asked, does not the due process clause protect the individual against unfair and unjust treatment? Yes, but not in executive or legislative investigations. The fact is that the due process safeguards of a criminal trial have not been interpreted to apply to legislative or executive investigations. While many investigations have unfairly and unjustly assumed the character of a criminal trial and abused the prestige of government, the rights of the individuals, and our concept of separation of powers in doing so, the normal rights of the accused have not been judicially accorded to a witness in an investigation.[11]

Moreover, the same delegate explained that the reason for not applying the same due process principles to legislative and executive investigations and hearing was so as to not "encourage the trend of regarding legislative hearings as criminal trials."[12] In advocating for fair and just treatment, the framers noted that the clause was intended to delegate the task of developing fair and just treatment to the legislature, the executive and to the courts.[13] Therefore, although the fair and just treatment clause does not categorically impose the guarantees of procedural due process in a quasi-judicial hearing, "the courts may ultimately find that some of the procedures and other hallmarks of due process

10 Id.
11 Id. at *32.
12 Id. at *35.
13 Id. at **37-38.

would be useful to enforce the right to fair and just treatment."[14]

Unlike the protections of due process, the fair and just treatment clause does not require a plaintiff to show that his life, liberty or property interests are at stake before being afforded relief from unfair or unjust treatment in a hearing.[15] Rather, the goal of the fair and just treatment clause is to protect individual rights in hearings and investigations because due process may not.[16] This inquiry is fact sensitive and all of the remedies are available for violations of the fair and just treatment clause.[17]

The removal hearing in the present matter is a quasi-judicial proceeding. Accordingly, Mr. Kilpatrick is entitled to an unbiased and impartial decision maker. Currently, Mr. Kilpatrick will be deprived of his right to fair and just treatment in the removal hearing with the Governor as the finder of fact.

For the following reasons, a removal hearing presided by the Governor would be both unfair and unjust. First, the Governor is not an unbiased fact finder. Second, the procedures outlined by the Governor do not sufficiently provide Mr. Kilpatrick an opportunity to properly defend himself. Last, MCL § 168.327, the statute that the Governor relies on for the removal proceeding, is impermissibly vague. This statute provides little notice of what conduct might subject Mr. Kilpatrick to removal and grants unfettered discretion to the Governor to remove him based on a nebulous evidentiary standard.

---

14 Id. at *38.
15 Id. at **30-31 (2000).
16 Id. at *36.
17 Id. at *42.

This Honorable Court must exercise its authority and obligation to the People of the State of Michigan by upholding the provisions of the Michigan Constitution.

A. The Statute Relied Upon by the Governor for the Removal Proceeding is Impermissibly Vague

A statute is void for vagueness if it does not provide fair notice of the conduct proscribed or it is so indefinite that it confers unstructured and unlimited discretion on the trier of fact to determine whether it has been violated.[18] Furthermore, a statute is impermissibly vague when it "leaves judges and jurors free to decide without any legally fixed standards, what is prohibited and what is not in each particular case."[19] A statute that lacks sufficient standards may permit a trier of fact to pursue his or her own predilections.[20] The legislature must establish minimal guidelines to promote fair enforcement of a statute.[21] The goal of this doctrine is to ensure that the State cannot hold people responsible for conduct that they could not reasonably understand to be proscribed.[22] In this case, the removal statute violates both of these principles and any proceeding pursuant to it cannot be called fair or just.

Fair and just treatment as is guaranteed under the Michigan Constitution must require that the fact finder be bound by some discernible standard. Despite this, MCL § 168.327 calls for removal for undefined "official misconduct" when the Governor is

18 Dep't of State Compliance & Rules Division v. Michigan Education Association-NEA, 251 Mich. App. 110, 116, 650 N.W.2d 120 (2002); *(See* also Proctor v. White Lake Township Police Dept., 248 Mich. App. 457, 467 (2002).
19 Giacco v. State of Pennsylvania, 382 U.S. 399, 402-03 (1966).
20 *See* Kolender v. Lawson, 461 U.S. 352, 358 (1983).
21 Id.
22 Sillery v. Bd. of Medicine, 145 Mich. App. 681, 686 (1985).

"satisfied" that a finding of such misconduct is supported by "sufficient evidence."

The Michigan Supreme Court instructed that when "official misconduct"is the grounds for removal:

> the misconduct which shall warrant a removal of the officer must be such as affects his performance of his duties as an officer an not such only as affect his character as a private individual.[23]

Under MCL § 168.327, the level of proof required in support of Mr. Kilpatrick's removal is that the Governor is "satisfied" that there is "sufficient evidence" of "official misconduct." This is an illusory standard.

The statute fails to define any of these terms and provides no guidance as to how the standard of proof is to be measured or tested. "Satisfactory evidence" is incapable of being defined objectively and effectively tested.

On August 28, 2008, in a telephone conference with the Governor's aids, the aids indicated that the Governor equates "sufficient evidence" with "satisfactory evidence," and that "satisfactory evidence" is evidence to satisfy an unprejudiced mind as to the truthfulness of the matter alleged. This standard is vague, subjective only in the mind of the sovereign, and capable of multiple interpretations. Furthermore, the term "official misconduct" is not defined in the Michigan Constitution nor in the applicable Michigan Election Law.

There simply is no way for one to prepare a case so as to refute that the party bringing the complaint has provided "sufficient evidence" to "satisfy" the Governor. The

23 Carroll v. City Commission of Grand Rapids, 265 Mich. 51, 58, 251 N.W. 381 (1933) (*Citing* Mechem, Public Offices and Officers, § 457).

strictures of this nebulous standard render Mr. Kilpatrick totally unable to properly defend himself in this matter.

B. The Removal Hearing Procedures Deny Mr. Kilpatrick an Opportunity to Properly Defend Himself

In a phone conference on Thursday, August 28, 2008, with the Governor's administrative aid, the rules and procedures for the hearing were dictated to Mr. Kilpatrick's counsel. Upon information and belief, it was to be followed by a written order signed by the Governor. As of September 1, 2008, it has not yet been received. The procedures outlined by the Governor's staff do not provide for the compulsory appearance of witnesses, and allows for the relaxed rules on the admissibility of evidence which undermines Kilpatrick's constitutional guarantee to be able to present meaningful evidence as well as the right to confront the witnesses against him. Further, the procedures permit the admission and consideration of evidence which has been proffered at deposition without the elimination of objected to evidence, which further complicates the proceedings. The real possibility exists that under the procedures dictated in that phone conference, the Governor will be making her decision based upon inadmissible evidence, privileged matters between attorney and client, conclusory statements and rank hearsay without the ability to cross-examine those witnesses.

Under the current procedure as described by the Governor's staff, counsel for the City Council will produce few witnesses in support of its petition to remove Kilpatrick. Instead, he will be relying upon transcripts of proceedings where there was no cross

examination or ability to confront the witness. In addition, the Governor has yet to rule upon issues of privilege that are at issue with respect to those documents, thereby violating rights that are guaranteed by the Constitution of the United States and the Constitution of the State of Michigan.

Plainly, Mr. Kilpatrick will be denied his right to fair and just treatment if the removal hearing proceeds pursuant to MCL § 168.327 and the procedures and evidentiary rules that have been provided.

C. The Governor, Through Her Statements and Actions, Has Shown that She Cannot Be An Unbiased Fact Finder in The Removal Proceeding

The core of fairness in adjudicative proceedings is a neutral and disinterested decision maker.[24] In order to ensure that Mr. Kilpatrick's right to fair and just treatment is protected, this Honorable Court should look to related guarantees in judicial proceedings, including the right to an unbiased and impartial fact finder. Michigan court rules allow for disqualification of a judge when he or she is personally biased for or against a party.[25] Bias in this context has been defined as "'an attitude or state of mind that belies an aversion or hostility of a kind or degree that a fair-minded person could not entirely set aside when judging certain persons or causes."[26]

Mr. Kilpatrick is entitled to a hearing before an unbiased and impartial decision maker presiding over the removal proceeding. Mr. Kilpatrick is not required to make a

24 *See* Williams v. Hofley Manufacturing Co., 430 Mich. 603, 617-18 (1988).
25 MCR 2.003(B)(1).
26 Cain v. Michigan Dept. of Corrections, 451 Mich. 470, 495, fn. 29 (1996)(*quoting* United States v. Conforte, 624 F.2d 869, 881 (9th Cir., 1980)).

showing of actual bias.[27] Evidence of bias is present where the decision maker:

1. has a pecuniary interest in the outcome;
2. was the target of personal abuse or criticism from the party before him;
3. was involved in other matters related to the party, or
4. might have prejudged the case because of prior participation in the matter.[28]

In the above instances, the probability of actual bias on the part of the decision maker is too high to be tolerable.

Similarly, the Due Process Clause requires a decision maker to be unbiased and impartial; a fair tribunal is a basic tenement of due process in both administrative hearings as well as judicial hearings.[29] Courts have consistently recognized that "due process demands impartiality on the part of those who function in a judicial or quasi-judicial capacities."[30] The judicial system has long endeavored to prevent even the probability of unfairness through actual bias.[31] There is no compelling reason why the same fundamental notions should not apply to the Governor's quasi-judicial removal hearing.

Plaintiff-Appellant specifically addresses the fourth provision of the bias analogy in support of his claim for fair and just treatment. Governor Granholm's numerous public statements to the media reveal the probability that she has an actual bias in favor of removing Kilpatrick from office. The evidence, while inferential, doe show a substantial tendency for bias. Specifically, the Governor has repeatedly indicated that a quick

27 Rose v. Houghton Lake Ambulance Serv., No. 242327, 2004 Mich. App. LEXIS 719, at *2-3 (2004).
28 Id. at * 3.
29 Cain, 451 Mich. at 497, 499.
30 Nat'l Labor Relations Bd. v. Ohio New and Rebuilt Parts, Inc., 760 F.2d 1443, 1450 (6th Cir., 1985).
31 Cain, 451 Mich. at 499.

resolution to Mr. Kilpatrick's situation is necessary for the good of the State of Michigan. Presently, the only means to a quick resolution within the Governor's control is for her to remove him from his office pursuant to MCL § 168.327. The following are a series of examples of statements that has been made in the media by the Governor:

a. "[The Governor]" says she hopes the situation can be resolved quickly." Ex. 1.
b. "Granholm says its important to turn the page and move forward because Detroit has a lot of positive momentum." Ex. 1.
c. "'This crisis has to be put behind us quickly, the faster the better – whatever that means.'" Ex. 2.
d. "'We have a ton of joint projects we are working on together and we've got to keep the momentum going. We don't want this scandal to be slowing down that progress.'" Ex. 2.
e. "'None of this is good, for the city, for the state. Whatever happens has to happen quickly so that we can turn the page and go to work,'" she said. 'There is no way you can spin any of this to be positive.'" Ex. 3.

The references to a speedy resolution, turning the page, put behind us quickly, all refer to a change, all of which would be at the expense of the Mayor. The actions of City Council, the unprecedented media coverage, and the calls for the resignation of the Mayor can only be satisfied upon the Governor's proposed precipitous action to remove Mr. Kilpatrick as the Mayor. It makes no sense otherwise. How do you turn a page or put the matter behind unless the Governor acts to remove? The speedy resolution, the turning of the page, the putting of this matter behind us can only be satisfied by a change. To say that it implies anything different would be disingenuous and defy logic.

In addition to the above comments, the Governor made other statements to the

press that further support her predisposition to remove Mr. Kilpatrick from office. These statements include the following conclusory language:

a. "Governor Granholm says she doesn't know if Detroit Mayor Kwame Kilpatrick can survive a scandal involving sexually explicit text messages between the mayor and his top aide." Ex. 1.
b. "Granholm says the scandal is bad for the image of Detroit and Michigan." Ex. 1.
c. "'I hope this is unprecedented and remains unprecedented because we certainly don't want to see a repeat of this in any way, shape or form,' she said." Ex. 3.

Any notion of fairness requires that the decision as to the Mayor's conduct be left up and until both sides have presented their evidence in the matter. Any comments in the media should be, at the very least, impartial because she is the trier of fact. Her comments to the media illustrate her predetermined position on this matter.

Beyond this, on May 27, 2008, Governor Granholm met with the Mayor's attorneys Sharon McPhail, James C. Thomas and Prosecutor Kym Worthy, and Worthy's assistant prosecutors, to discuss a global resolution of the matters pending against Kilpatrick. This meeting was scheduled at the Governor's behest. While it was considered to be a confidential meeting between the above named parties, the Governor breached that confidentiality by communicating the content of the discussions to third parties without prior consent of all involved. As a result of her or her staff's contact with third parties, it is believed that meeting was widely publicized.

It was apparent from the presentation at this meeting that the Governor had not considered Mr. Kilpatrick's innocence. To the contrary, at this meeting, the Governor and

her staff had prepared a blackboard scenario in which his presumption of innocence was ignored and significantly undercut. When counsel attempted to explain that there were significant factual and legal issues, the Governor ignored the issues presented, indicating Kilpatrick had to resign because it was making Michigan look bad. When attorney McPhail again protested that Kilpatrick had viable defenses to the charges, the Governor responded that it did not matter. See Affidavit of Counsel, Ex. 4 and 5.

The Governor may argue that, despite any form of bias on her part, she must still hold the removal proceeding because of the common law rule of necessity.[32] The rule of necessity, as applied to adjudicative officers, provides that they are not disqualified because of bias, prejudice or prejudgment of the issues where they alone have the power and authority to act and where, if they were to be disqualified, action cannot otherwise be taken and a failure of justice would result.[33]

The concept of "necessity" is to be construed narrowly, in favor of delegating judicial authority to others whenever possible.[34] The doctrine of necessity should only be invoked in those instances where the matter cannot be set aside until a later date, and there is no alternative forum able to grant the same relief.[35]

---

32 In her Response to the Plaintiff's Motion for a Temporary Restraining Order, the Governor relied on United States v. Will, 449 U.S. 200 (1980) and Evans v. Gore, 253 U.S. 245 (1920). This reliance is misplaced. Both of these cases discuss instances where judges had personal pecuniary interests in the outcome of the cases. (See Will, 449 U.S. 200 [considering whether the judges had a duty to recuse themselves because the case pertained to the level of compensation they were to receive]; Evans, 253 U.S. 245 [finding that the plaintiff judge was entitled to bring an action related to his own compensation]). In the present matter, Mr. Kilpatrick alleges that the Governor is unfairly biased to the extent that a failure of justice would result if she were to act as a fact finder in the removal hearing.

33 Acme Brick Co. v. Missouri Pacific Railroad Co., 821 S.W.2d 7, 10 (Ark. 1991).

34 In the Matter of General Motors Corp. v. Rosa, 624 N.E.2d 142, 145 (N.Y. 1993).

35 Allen v. Toms River Regional Bd. of Education, 559 A.2d 883, 887-88 (N.J. Super. Ct. 1989).

The anticipated argument of necessity does not save the Governor's hearing at this time because the Governor herself could easily stay the proceedings before her pending the outcome of Kilpatrick's criminal trial, which regardless of outcome, would resolve the issue of removal altogether.[36]

As a result of the Governor's reported unfair bias and partiality regarding Mr. Kilpatrick's removal from office, the hearing scheduled for September 3, 2008 will not provide Mr. Kilpatrick with the fair and just treatment he is entitled to under the Michigan Constitution. This Honorable Court can only protect Mr. Kilpatrick's constitutional rights by reversing Judge Ziolkowski's decision to deny Plaintiff-Appellant a temporary restraining order enjoining the Governor from conducting the removal proceedings.

CONCLUSION

For the reasons set forth above, the removal proceeding regime denies Mr. Kilpatrick to a fair and just quasi-judicial hearing before the Governor. The Governor has exhibited a bias in this matter, the proceeding prevents Mr. Kilpatrick from mounting a proper defense and the statute authorizing this proceeding is impermissibly vague. Therefore, in order to maintain his constitutional rights, this Honorable Court must enjoin the removal proceeding by reversing Judge Ziolkowski's decision.

36 In the event that the Mayor is convicted, he will be removed from office as a matter of law. *See* MCL § 201.3.

RELIEF REQUESTED

WHEREFORE, Mr. Kilpatrick prays this Honorable Court to grant the instant appeal and reverse Judge Ziolkowski's Order Denying Plaintiff-Appellant a Temporary Restraining Order and Preliminary Injunction enjoining the Governor's Removal proceedings against Mr. Kilpatrick.

Respectfully Submitted,

James Thomas (P23801)
Of Counsel, Plunkett & Cooney
Attorney for Hon. Kwame Kilpatrick

JOSEPH A. NISKAR (P55538)
MICHAEL C. NAUGHTON (P70856)
535 Griswold Street, Suite 2632
Detroit, MI 48226
(313) 963-2420
535 Griswold St., Suite 2632
Detroit, MI 48226
(313) 963-2420

Dan K. Webb
Winston & Strawn
Attorney for Hon. Kwame Kilpatrick
35 W. Wacker Dr. #4200
Chicago, IL 60601
(312) 558-5600

Dated: September 2, 2008

WZZM 13 News - Print Editon

Granholm doesn't know if Detroit mayor can survive scandal

Mayor Kwame Kilpatrick
DFP

Web Editor: Lanetta Williams
6 months ago

DETROIT - Governor Granholm says she doesn't know if Detroit Mayor Kwame Kilpatrick can survive a scandal involving sexually explicit text messages between the mayor and his top aide. Granholm says the scandal is bad for the image of Detroit and Michigan. She says she hopes the situation can be resolved quickly. Granholm says it's important to turn the page and move forward because Detroit now has a lot of positive momentum. The state Court of Appeals has ordered the release of documents related to the city's settlement of a whistle-blowers' trial. Kilpatrick says the city hasn't decided whether to appeal the order by today's deadline.

AP

EXHIBIT
A

The Macomb Daily

Granholm says she'll stay put

Governor cools rumors of role in Clinton White House

By Chad Selweski
Macomb Daily Staff Writer

Fresh off of her sixth State of the State address, Gov. Jennifer Granholm on Thursday put an end to speculation that she may be leaving for a high-ranking position in the nation's capital if Hillary Clinton wins the White House.

"I've never left a job before it was done. We're not done yet. We've got stuff we've got to get done and I want to complete the job," Granholm said in an interview with Macomb Daily reporters and editors.

A Clinton supporter, Granholm said her focus is on her final three years in Lansing, not a job in Washington. The governor said guessing about her political future, including a potential Cabinet post, has become a "favorite parlor game in Lansing." Some political observers had suggested that Granholm's Tuesday speech would be her last State of the State address.

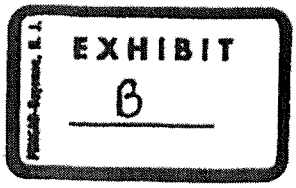
Asked if she was pledging to complete her term of office, Granholm quickly responded: "I'm not interested in leaving. I've got family here. My kids are in school here. I'm going to stay here," she said.

The governor would not offer any of her own speculation about one of her political allies, Detroit Mayor Kwame Kilpatrick, who is mired in scandal due to an affair with his former chief of staff.

Granholm said she hopes Wayne County Prosecutor Kym Worthy will quickly complete her investigation to determine whether the mayor may have committed perjury by denying the affair at a 2007 civil trial that cost the city $9 million.

The governor said she has not talked to Kilpatrick since the story broke, but she's worried about the impact the nonstop publicity will have on Detroit's economic progress.

"It certainly doesn't help," she said. "This crisis has to be put behind us quickly, the faster the better - whatever that means. We have a ton of joint projects we are working on together and we've got to keep the momentum



going. We don't want this scandal to be slowing down that progress."

The governor spoke after visiting the Electrical Industry Training Center in Warren. The facility, run by the International Brotherhood of Electrical Workers, teaches the skills needed for building wind turbines and solar panels.

Granholm is traveling the state touting her new economic development initiatives.

One proposal outlined on Tuesday would offer generous tax incentives to those businesses that are among the 50 fastest-growing sectors in the national economy.

Michigan companies in that category would see their tax credit for creating new jobs triple. Out-of-state firms that move here would pay no business taxes in their first year in Michigan. The second year, they would get a 75 percent break on their tax bill. The credits would gradually phase out over a 4-year period.

The governor said the plan acknowledges that all states are in a bidding war to land new jobs.

"Every state is in the game," she said, "and you better believe we need to be in the game too."

Click here to return to story:
http://www.macombdaily.com/stories/020108/loc_n2001.shtml

The Macomb Daily

Governor dodges mayor scandal

Granholm visits Macomb, hammering need for work force diversity

By Chad Selweski
Macomb Daily Staff Writer

Gov. Jennifer Granholm on Thursday dodged questions about whether Detroit Mayor Kwame Kilpatrick should resign, but the governor said she hopes the city can quickly "turn the page" by concluding the ongoing investigations of the text messaging scandal.

Granholm acknowledged that Kilpatrick's secret settlement of whistle-blower lawsuits had generated negative national media reports about Detroit and had also cast a shadow over Michigan.

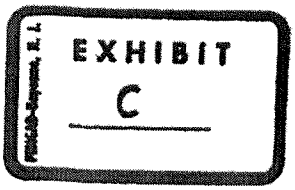
"None of this is good, for the city, for the state. Whatever happens has to happen quickly so that we can turn the page and go to work," she said. "There ... is no way you can spin any of this to be positive."

Kilpatrick has brushed aside calls for his resignation after court documents released Wednesday showed that he agreed to an $8.4 million settlement in an attempt to keep incriminating text messages under wraps. Transcripts of those messages showed that the mayor had a sexual relationship with his former chief of staff, Christine Beatty.

"We have to let the legal system take its course. And I don't think I can add anything more to that," Granholm said when asked if Kilpatrick should quit if he's charged with perjury or other crimes.

The Detroit City Council is investigating the mayor's attempt to cover up the settlement and the role the city's Law Department played. At the same time, the Wayne County Prosecutor's Office is investigating whether Kilpatrick committed perjury when he denied the affair with Beatty during testimony in the whistle-blower trial. Prosecutor Kym Worthy has said the inquiry will end by mid-March.

Granholm was swarmed by reporters Thursday as she completed an event in Clinton Township. The governor said she hoped that any legal precedents established in the Detroit case would be overshadowed by basic lessons learned about the need for openness in government.



"I hope this is unprecedented and remains unprecedented because we certainly don't want to see a repeat of this in any way, shape or form," she said.

Granholm's remarks came after hosting a roundtable discussion about the Michigan economy with about three dozen people at the Macomb County Public Works Commissioner's Office.

The participants ranged from local business owners and unemployed workers to a social worker and a hospital administrator. The topics they raised included home foreclosures, job training, manufacturing losses, water pollution, health care, food assistance programs and full-day kindergarten.

Granholm was particularly focused on her recurring message about diversifying the Michigan economy by attracting companies associated with renewable energy sources, such as wind power.

Dale Camphous, owner of a Harrison Township tool and die shop, said if his business is to survive it quickly needs new tax incentives - a "shot in the arm."

Granholm said the wind turbine industry may provide the solution for Camphous' company and many other struggling tool and die shops. GE has a 3-year waiting list of contracts to build turbines, she said, and it will bring some of that business to Michigan if the Legislature adopts a renewable fuels standard.

Granholm favors legislation languishing in the Capitol that would mandate that 10 percent of the state's electricity must be generated by wind, solar or other eco-friendly power sources by 2015.

"When you hear those words, global warming or climate change, you should be thinking jobs," she said. "The minute (a state standard) is in place, those investments will take place here in Michigan."

Click here to return to story:
http://www.macombdaily.com/stories/022908/loc_local01.shtml